

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NATHAN L. JACKSON, Individually and
on behalf of a putative class of similarly
situated individuals

v.

EAST TEXAS MEDICAL CENTER ATHENS,
EAST TEXAS MEDICAL CENTER REGIONAL
HEALTHCARE SYSTEM, EAST TEXAS
MEDICAL CENTER, EAST TEXAS MEDICAL
CENTER PITTSBURGH, EAST TEXAS MEDICAL
CENTER FAIRFIELD, EAST TEXAS MEDICAL
CENTER RUSK, EAST TEXAS MEDICAL
CENTER CROCKETT, EAST TEXAS MEDICAL
CENTER JACKSONVILLE, EAST TEXAS
MEDICAL CENTER CLARKSVILLE, EAST
TEXAS MEDICAL CENTER TRINITY,
EAST TEXAS MEDICAL CENTER CARTHAGE,
EAST TEXAS MEDICAL CENTER QUITMAN,
EAST TEXAS MEDICAL CENTER MOUNT
VERNON, AND EAST TEXAS MEDICAL
CENTER GRAND SALINE

v.

AETNA HEALTH AND LIFE INSURANCE
COMPANY; AETNA INSURANCE COMPANY
OF AMERICA, AMERICAN FAMILY LIFE
ASSURANCE COMPANY OF COLUMBUS;
AMERICAN NATIONAL INSURANCE
COMPANY; BANKERS LIFE AND CASUALTY
COMPANY; BENEFIT LIFE INSURANCE
COMPANY; CHRISTIAN FIDELITY LIFE
INSURANCE COMPANY; CIGNA
HEALTH-CARE OF TEXAS, INC.;
COMBINED UNDERWRITERS LIFE
INSURANCE COMPANY; CONNECTICUT

CIVIL ACTION No. 6:00CV442

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT 16 2000

DAVID J. MALAND, CLERK
BY
DEPUTY

GENERAL LIFE INSURANCE COMPANY;	§
EMPLOYERS HEALTH INSURANCE	§
COMPANY; FIRST HEALTH LIFE &	§
HEALTH INSURANCE COMPANY;	§
FORTIS BENEFITS INSURANCE COMPANY;	§
FORTIS INSURANCE COMPANY; GENERAL	§
AMERICAN LIFE INSURANCE COMPANY;	§
GOLDEN RULE INSURANCE COMPANY;	§
THE GUARDIAN LIFE INSURANCE COMPANY	§
OF AMERICA; HARRIS METHODIST HEALTH	§
INSURANCE COMPANY; HARRIS METHODIST	§
TEXAS HEALTH PLAN, INC.; HEALTHPLAN OF	§
TEXAS, INC., HUMANA HEALTH PLAN OF	§
TEXAS, INC.; JEFFERSON PILOT LIFE-AMERICA	§
INSURANCE COMPANY; JOHN ALDEN LIFE	§
INSURANCE COMPANY; JOHN HANCOCK	§
LIFE INSURANCE COMPANY; KAISER	§
FOUNDATION HEALTH PLAN OF TEXAS;	§
LIBERTY MUTUAL INSURANCE COMPANY;	§
MARKEL INSURANCE COMPANY;	§
METROPOLITAN LIFE INSURANCE COMPANY;	§
MUTUAL OF OMAHA INSURANCE COMPANY;	§
NATIONAL ASSOCIATION OF LETTER	§
CARRIERS HEALTH BENEFIT PLAN; NATIONAL	§
FINANCIAL INSURANCE COMPANY;	§
NEW ERA LIFE INSURANCE COMPANY;	§
NEW ERA LIFE INSURANCE COMPANY OF THE	§
MIDWEST; PCA HEALTH PLANS OF TEXAS,	§
INC. D/B/A HUMANA HEALTH PLAN OF TEXAS,	§
INC.; PHYSICIANS MUTUAL INSURANCE	§
COMPANY; PIONEER LIFE INSURANCE	§
COMPANY; PRINCIPAL LIFE INSURANCE	§
COMPANY; PROVIDENT LIFE AND ACCIDENT	§
INSURANCE COMPANY; PRUDENTIAL HEALTH	§
CARE PLAN, INC.; PRUDENTIAL HEALTHCARE	§
AND LIFE INSURANCE COMPANY OF AMERICA;	§
THE PRUDENTIAL INSURANCE COMPANY OF	§
AMERICA; RELIASTAR LIFE INSURANCE	§
COMPANY; RESERVE NATIONAL INSURANCE	§
COMPANY; SIERRA HEALTH AND LIFE	§
INSURANCE COMPANY, INC.; STANDARD	§

LIFE AND ACCIDENT INSURANCE COMPANY;	§
STATE FARM LIFE INSURANCE COMPANY;	§
UNICARE LIFE & HEALTH INSURANCE	§
COMPANY; UNITED AMERICAN INSURANCE	§
COMPANY; UNITED HEALTHCARE INSURANCE	§
COMPANY; UNIVERSAL FIDELITY LIFE	§
INSURANCE COMPANY; USAA LIFE	§
INSURANCE COMPANY; AND WAUSAU	§
UNDERWRITERS INSURANCE COMPANY	§

**THIRD-PARTY DEFENDANT HEALTHPLAN OF TEXAS, INC.'S
FIRST ANSWER TO DEFENDANTS' FIRST AMENDED THIRD-PARTY COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Third-Party Defendant Healthplan of Texas, Inc. ("Third-Party Defendant") answers Defendants' First Amended Third-Party Complaint asserting damages against them as follows:

I.

FIRST DEFENSE

Plaintiffs' and Third-Party Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

II.

SECOND DEFENSE

Third-Party Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

III.

THIRD DEFENSE

One or more of Third-Party Plaintiffs' claims are pre-empted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* Further, on information and belief, some or all of the claims of the Plaintiffs' putative class members are pre-empted by ERISA because they

relate to benefits allegedly due under one or more employee welfare benefit plans governed by ERISA for which Third-Party Plaintiffs are seeking contribution and indemnity.

IV.

FOURTH DEFENSE

Third-Party Defendant would show this Court that Plaintiffs' claims, if any, against it are barred by the terms of Third-Party Defendant's contracts with Third-Party Plaintiffs and Plaintiffs and/or any potential class members or their employers.

V.

FIFTH DEFENSE

Third-Party Defendants would show this Court that Third-Party Plaintiffs' and Plaintiffs' claims are premature and fail to state a claim given that Third-Party Defendant's agreement with Third-Party Plaintiffs and Plaintiffs, other potential Plaintiffs, and/or their employers compel arbitration of disputes such as the one involved in the case at bar.

VI.

SIXTH DEFENSE

Third-Party Defendant would show this Court that Plaintiffs' and Third-Party Plaintiffs' claims are barred by the doctrines of ratification, laches, waiver and estoppel.

VII.

SEVENTH DEFENSE

Plaintiffs' action, for which Third-Party Plaintiffs are seeking contribution and indemnity, is not properly maintainable as a class action as the requirements for a class action are not met.

VIII.

EIGHTH DEFENSE

To the extent that one or more of Plaintiffs' putative class members have failed to exhaust their administrative remedies in connection with their claims for benefits allegedly due under an employee welfare benefit plan governed by ERISA, for which Third-Party Plaintiffs are seeking contribution and indemnity, Plaintiffs' and Third-Party Plaintiffs' claims must be dismissed.

IX.

NINTH DEFENSE

Upon information and belief, one or more of the Plaintiffs' putative class members have assigned their rights to benefits under their employee welfare benefit plan, governed by ERISA, to one or more of the Defendant/Third-Party Plaintiffs, and therefore such Plaintiffs' putative class members lack standing to seek recovery of the same from Third-Party Plaintiffs' and Third-Party Plaintiffs are precluded from seeking contribution or indemnity for the same from Third-Party Defendants.

X.

TENTH DEFENSE

Third-Party Plaintiffs' claims are barred by the applicable statutes of limitation.

XI.

ELEVENTH DEFENSE

Third-Party Defendant responds to the allegations of Third-Party Plaintiffs' First Amended Complaint as follows:

1. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraphs 1 through 21 and, therefore, denies the same.
2. Third-Party Defendant admits the allegations of paragraph 22.
3. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraphs 23 through 56 and, therefore, denies the same. this lawsuit.
4. There is no need to admit or deny the allegations of paragraph 57.
5. Third-Party Defendant admits that Plaintiff makes the allegations set forth in paragraph 58, but denies the truth of those allegations.
6. Third-Party Defendant admits the allegations in the first, second, and last sentences of paragraph 59 to the extent that they pertain to Defendant Healthplan of Texas, Inc. However, Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 59 and, therefore, denies the same.
7. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and, therefore, denies the same.
8. Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of the statements in paragraph 61 and, therefore, denies the same.
11. Third-Party Defendant denies that Third-Party Plaintiffs are entitled to the relief sought in paragraph 62.

Third-Party Defendant denies any and all allegations not expressly admitted herein.

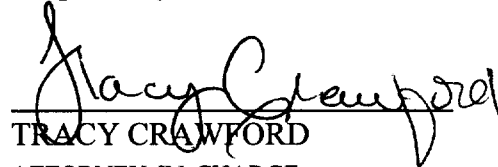
COUNTERCLAIM

1. This counterclaim is asserted against Third-Party Plaintiffs, who have already appeared herein.
2. Third-Party Defendant seeks to recover from Third-Party Plaintiffs its reasonable and necessary attorneys' fees and costs of court expended in the defense of this action, pursuant to 29 U.S.C. § 1132 (g).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendant Healthplan of Texas, Inc. respectfully requests that Third-Party Plaintiffs be denied relief, that they take nothing by their suit, that all taxable costs of Court be adjudicated against them. Third-Party Defendant also requests that it have and recover its reasonable and necessary attorneys' fees and costs of court expended in the defense of this action. Third-Party Defendant also seeks such other and further relief, both general and special, to which it may be justly entitled.

Respectfully submitted,



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TEXAS, INC

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of October, 2000, a true and correct copy of the foregoing instrument was placed in the United States certified mail, return receipt requested, with proper postage affixed thereon, to all counsel of record as shown on the attached service list.



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